

**2018**

# DAVIS BACON PRINCIPLES

**Federal Labor Standards for Government Construction  
Contracts**



**WAGE AND HOUR DIVISION**

UNITED STATES DEPARTMENT OF LABOR

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# **Introduction to Davis Bacon**

# Davis Bacon Act (DBA)

- Enacted in 1931
- Amended in 1935 and 1964
- Protects communities and workers from non-local contractors underbidding local wage levels

# DBA Coverage

- Applies to contracts in excess of \$2,000 to which the Federal Government or the District of Columbia is a party for construction, alteration, and/or repair, including painting and decorating, of public buildings or public works.

# Davis Bacon Related Acts (DBRA)

- Davis-Bacon (DB) requirements extend to numerous “related Acts” that provide federal assistance by
  - Grants
  - Loans
  - Loan guarantees
  - Insurance

# Distinguishing DBA and DBRA

## DBA

- VA hospital
- Federal office building (GSA)
- Military base housing (DOD)
- National Park road (Dept. of Interior)

# Distinguishing DBA and DBRA

## DBRA

- HUD - assisted housing construction project
- EPA - assisted water treatment plant construction project
- The Federal Highway Administration provides grants to states for reconstruction of roads and bridges on Federal-aid highways

# Labor Standards/Contract Stipulations

- The term “labor standards” means the requirements of:
  - The Davis-Bacon Act;
  - The Contract Work Hours and Safety Standards Act;
  - The Copeland Act;
  - Prevailing wage provisions of the Davis-Bacon and “related Acts”; and
  - Regulations, 29 CFR 1, 3, and 5.

# Davis Bacon Labor Standards (29 CFR 5.5)

- 5.5(a)(1) - Minimum wages
- 5.5(a)(2) - Withholding
- 5.5(a)(3) - Maintaining basic payroll records
- 5.5(a)(4) – Apprentices and trainees
- 5.5(a)(5) – Copeland Act compliance

# Davis Bacon Labor Standards (29 CFR 5.5)

- 5.5(a)(6) - Subcontracts
- 5.5(a)(7) - Contract termination and debarment
- 5.5(a)(8) - Rulings and interpretations
- 5.5(a)(9) - Disputes concerning labor standards
- 5.5(a)(10) - Certification of eligibility



# **Compliance Principles**

## ***Basics***

# Laborers and Mechanics

- Workers whose duties are manual or physical in nature;
- Includes apprentices, trainees and helpers; and
- For CWHSSA, includes guards and watchmen.

# Laborers and Mechanics

- Does not include:
  - Timekeepers, inspectors, architects, engineers; or
  - Bona fide executive, administrative, and professional employees as defined under FLSA.
- Working foremen are generally non-exempt:
  - must be paid the Davis Bacon (DB) rate for the classification of work performed if not 541 exempt.

# Site of the Work

- Davis-Bacon applies only to laborers and mechanics employed “directly on the site of the work.”
- A three-part definition applies to determine the scope of the term “site of the work.”

# Site of the Work Definition #1

- DBA applies only to workers “directly on the site of the work:”
  - The physical place or places where the construction called for in the contract will remain after work has been completed; and
  - Any other site where a **significant** portion of the building or work is constructed, *provided that* such site is established specifically for the contract.

# Site of the Work Definition #2

- “Site of the work” also includes job headquarters, tool yards, batch plants, borrow pits, etc., *provided* they are:
  - Located adjacent or virtually adjacent to the “site of the work” described in paragraph 1; and
  - Dedicated exclusively or nearly so to the performance of the contract or project.
  - Except if they are excluded – see next slide

# Site of the Work Definition #3

- “Site of the work” does not include a contractor’s or subcontractor’s:
  - permanent home office, branch locations, fabrication plants, tool yards, etc.;
  - whose location and continuance in operation are determined without regard to a particular covered project.

# Definition #3 (Cont'd.)

- Also not included in the “site of the work” are:
  - Fabrication plants, batch plants, job headquarters, tool yards, etc., of a commercial supplier established by a supplier of materials:
    - Before the opening of bids for a project; and
    - Not located on the actual site of the work.
  - Such permanent, previously established facilities, are not part of the “site of the work,” even where the operations for a period of time may be dedicated exclusively, or nearly so, to the performance of a contract.

# Truck Drivers

- Truck drivers of the contractor or subcontractor are covered by Davis-Bacon for time:
  - Spent working on the “site of the work;” and/or
  - Spent loading or unloading materials and supplies on the “site of the work,” if such time is more than *de minimis*.

# Truck Drivers

- Truck drivers are also covered when:
  - Transporting materials and supplies between a facility that is part of the “site of the work” and the actual construction site; or
  - Transporting portions of a building or work between a site where a significant portion of the project is being constructed and the physical place where the building or work will remain.

# Truck Drivers Owner-Operators

- DOL has an enforcement position with respect to *bona fide* owner-operators of trucks who are independent contractors (an owner-operator is a person who owns and drives a truck). Certified payrolls including the names of such owner-operators do not need to show the hours worked or the rates paid, only the notation “owner-operator.”
- This position does not apply to owner-operators of other equipment such as bulldozers, cranes, etc.

# Material Suppliers

- The manufacture and delivery to the work site of supply items such as sand, gravel, and ready-mixed concrete by bona fide material suppliers, are activities not covered by DBA/DBRA requirements (even though the materials are delivered directly into a contractor's work site mixing facilities).
- Bona fide material suppliers (including truck drivers) whose only contractual obligations for on-site work are to deliver materials and/or pick up materials are not considered contractors under the DBA/DBRA. Thus, their employees are not subject to the Davis-Bacon labor standards.

# Material Suppliers (cont'd.)

- However, laborers and mechanics employed at the site of the work by a material supplier, manufacturer, or carrier that undertakes to perform a part of a construction contract as a subcontractor:
  - Would be subject to Davis-Bacon labor standards in the same manner as those employed by any other contractor or subcontractor.
  - For enforcement purposes, if such a worker spends more than an incidental amount (20%) of his/her time in a workweek engaged in construction work on the site, he/she is covered for all time spent on the site during workweek.



# **Compliance Principles**

## ***Wage Determinations & Conformances***

# Wage Determinations

Davis-Bacon WDs specify the prevailing wages, including fringe benefits, which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character in the localities specified therein.

# “General” WDs

- Issued for most counties for each major type of construction (building, heavy, highway and residential) nationwide.
- Official site for General Wage Determinations – [www.wdol.gov](http://www.wdol.gov).
- May be used by Federal agencies without notifying the WHD.

# Selecting the Correct Wage Determination

- Selecting and incorporating the appropriate general wage determination for the project type
    - Building
    - Residential
    - Highway, and/or
    - Heavy
  - Application of Multiple Wage Schedules
  - Separate constructions types and:
    - At least 20% of the total project is a different type of construction; and/or
    - The different type of construction is at least \$1 million in cost
- Guidance found in AAM 130 and 131

# Selecting the Correct Wage Determination

Incorporate most current WD:

- Negotiated contracts (“RFPs”) – Time of award.
- Competitively bids contracts: In effect 10 days or more before opening of bids.
- Exceptions.
- If the contract is not awarded within 90 days of bid opening, any modification to the WD must be incorporated unless the federal agency requests and obtains an extension of the 90 day period.

# Interpreting General Wage Determinations

- Decision Number
- State and county
- Type of construction with description
- Record of modifications
- List of classifications and rates
- Basis for rates – Identifiers
  - Union Identifiers
  - Union Weighted Average Identifiers
  - SU Identifiers

# Interpreting “General” WDs

## Cover Sheet

General Decision Number: LA170002 01/20/2017 LA2

Superseded General Decision Number: LA20160002

State: Louisiana

Construction Type: Heavy

Counties: Acadia, Ascension, Bossier, Caddo, Calcasieu, East Baton Rouge, Lafayette, Lafourche, Livingston, Ouachita, Rapides, St Landry, St Martin, Terrebonne, Webster and West Baton Rouge Counties in Louisiana.

HEAVY CONSTRUCTION PROJECTS (includes flood control, water & sewer lines, and water wells; excludes elevated storage tanks, industrial construction-chemical processing, power plants, and refineries)

Note: Under Executive Order (EO) 13658, an hourly minimum wage of \$10.20 for calendar year 2017 applies to all contracts subject to the Davis-Bacon Act for which the contract is awarded (and any solicitation was issued) on or after January 1, 2015. If this contract is covered by the EO, the contractor must pay all workers in any classification listed on this wage determination at least \$10.20 (or the applicable wage rate listed on this wage determination, if it is higher) for all hours spent performing on the contract in calendar year 2017. The EO minimum wage rate will be adjusted annually. Additional information on contractor requirements and worker protections under the EO is available at [www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts).

Modification Number

Publication Date

0

01/06/2017

1

01/13/2017

2

01/20/2017

# Interpreting “General” WDs

## Body of WD

### Union Identifiers

**ELEV0101-001 10/01/2017**

**ELEV**ator Constructors: International Union

Local **101**: Local union Number

**001**: Internal Processing Number

**10/01/2017**: Date the rate became effective on the CBA

# Interpreting “General” WDs

## Body of WD

CARP0055-001

11/01/2016

	<b>Rates</b>	<b>Fringes</b>
CARPENTER (Acoustical Ceiling Installation and Drywall Hanging Only)	\$26.25	\$8.64

-----  
CBA rates are updated when CBA rates are changed

# Interpreting “General” WDs

## Body of WD

### **SU (Non-Union) Identifiers**

**SUCO2015-015      07/31/2015**

<b>SU:</b>	<b>SURvey</b> – Basis of Rate(s)
<b>CO:</b>	Colorado
<b>2013:</b>	Date of Survey
<b>015:</b>	Internal numbering
<b>7/31/2015:</b>	Date submitted for publication

**\* SU rates remain unchanged until new survey**

# Interpreting “General” WDs

## Body of WD

**SUCO2015-05 07/31/2015**

	<b>Rates</b>	<b>Fringes</b>
<b>Bricklayer.....</b>	<b>\$ 21.96</b>	<b>0.00</b>
<b>Carpenter.....</b>	<b>\$ 18.22</b>	<b>0.00</b>

# Conformances

- Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).
- Conformance requirements:
  - The work to be performed by the proposed classification is not performed by a classification already in the wage determination (WD);
  - The proposed wage rate must bear a reasonable relationship to WD rates; and
  - The proposed classification is utilized in the area by the construction industry.

# Unnecessary Conformance Actions

**Conformance requests are not  
needed for bona fide:**

- **Apprentices;**
- **Trainees; or**
- **Welders**

# Conformance Process

## **Pre-Bid/Pre-Award**

Both the Contracting Agency & Contractor should:

- Review the WD;
- Compare the WD with the project work;
- Anticipate needed classifications; and
- Apply key criteria.

# Conformance Process

## After-Award

Contractor should:

- Identify needed classes;
  - At the pre-construction conference.
  - From certified payrolls.
- Advise agency of the needed classification;
- Complete Contractor Part of SF-Form 1444.
  - Apply Conformance Key Criteria.
- Forward SF-Form 1444 to agency for review, signature, and submission to DOL.

# Conformance Process: Submitting the SF-1444

- <https://www.wdol.gov/docs/sf1444.pdf>
- <https://www.wdol.gov/conform-faqs.pdf>

# WDOL

## Home Page

<https://beta.sam.gov/>

The screenshot shows the beta.SAM.gov website in a web browser. The address bar displays <https://beta.sam.gov/>. The browser's address bar also shows "Identified by Entrust" and a search bar. The page title is "beta.SAM.gov | Home". The browser's menu bar includes "File", "Edit", "View", "Favorites", "Tools", and "Help". A notification bar at the top states "An official website of the United States government" and "Authoritative site for Assistance Listings and Wage Determinations only". A prominent message reads: "LOGIN.GOV is now live on Beta.SAM.gov. You will now log in to Beta.SAM.gov using login.gov. Please check out the video for more information: <https://beta.sam.gov/cm/videos/detail?id=231>". Below this, there is a "More alerts" link. The main header features the "SAM<sup>beta</sup>.GOV" logo, a search bar, and a "Sign in" button. A dropdown menu is open, showing options: "All Award Data", "Assistance Listings", "Contract Opportunities", "Contract Data", "Entity Information", "Federal Hierarchy", and "Wage Determinations". The main content area has a large banner with the text "Welcome" and "This will be the official U.S. government website for people who make, receive, and manage federal awards." A circular seal in the bottom right corner reads "100% FREE TO USE" and "Official U.S. Government Website". The footer includes the text "What Can I Do Here?". The Windows taskbar at the bottom shows the time as 2:34 PM on 10/10/2019.

beta.SAM.gov | Home

File Edit View Favorites Tools Help

Public Access to Court Ele...

An official website of the United States government [Here's how you know](#)

Authoritative site for Assistance Listings and Wage Determinations only

**LOGIN.GOV is now live on Beta.SAM.gov**

You will now log in to Beta.SAM.gov using login.gov. Please check out the video for more information: <https://beta.sam.gov/cm/videos/detail?id=231>

More alerts

**SAM<sup>beta</sup>.GOV**

Search

Sign in

All Award Data  
Assistance Listings  
Contract Opportunities  
Contract Data  
Entity Information  
Federal Hierarchy  
Wage Determinations

ing for.. Search

**Welcome**

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Official U.S. Government Website  
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What Can I Do Here?

2:34 PM  
10/10/2019



# **Compliance Principles** *Surveys*

# Area Practice Surveys

- There are no nationwide standard classification definitions under the DBA.
- To determine proper classifications for workers employed on a Davis-Bacon covered project, it may be necessary to examine **local area practice**.

# Impact of Survey Participation

**Accuracy and completeness of wage determinations is dependent upon:**

- **Survey participation by contractors, unions, contractor associations, federal agencies and other interested parties; and**
- **The level of construction activity.**

# Wage Survey Process

- **Notification of contractors and interested parties;**
- **Non-respondent follow-up; and**
- **Data collection, analysis and clarification.**
  - If insufficient data is received for a classification, no rate will be recommended.



# **Compliance Principles**

## ***Apprentices, Trainees, & Helpers***

# Apprentices and Trainees

- Are laborers and mechanics; not listed on WDs.
- Permitted to work on covered projects and be paid less than the journey level WD rate when:
  - Individually registered in an approved apprenticeship or training program;
  - Paid the percentage of hourly rate required by the apprenticeship or training program;

# Apprentices

- Persons individually registered in a bona fide apprenticeship program registered with DOL's Employment Training Administration (ETA) Office of Apprenticeship (OA) or a State Apprenticeship Agency recognized by OA.
- Individuals in their first 90 days of probationary employment as an apprentice in such a program.
- Regulations: 29 C.F.R. §§ 5.2(n)(1) and 5.5(a)(4)(i).

# Trainees

- Persons registered and receiving on-the-job training in a construction occupation under a program approved in advance by DOL's Employment Training Administration (ETA).
- Regulations: 29 C.F.R. §§ 5.2(n)(2) and 5.5(a)(4)(ii).

# Employment Training Administration Office of Apprenticeship

[www.doleta.gov](http://www.doleta.gov)

**Dudley Light**

U.S. Department of Labor

Office of Apprenticeship

(972) 850-4682

Light.Dudley@dol.gov

# Helpers

- May be employed if:
  - Duties are clearly defined and distinct from other classifications on the WD;
  - An established prevailing practice in the area; and
  - Not employed in an informal training program.
- May be added to WD if all above conditions are met; and no WD class performs the work.



# **Compliance Principles**

## ***Prevailing Wage & Fringe Benefits***

# Wages & Fringe Benefits

- DBA: the terms “wages” and “prevailing wages” include:
  - The basic hourly rate (BHR);
  - Contractor contributions *irrevocably* made to a trustee or third party pursuant to a bona fide fringe benefit (FB) fund, plan, or program; and/or
  - The rate of costs the contractor reasonably anticipates in providing bona fide FB’s where certain conditions are met.

# Wage & Fringe Benefits

- Under DBA, FB's are a component of the DBA “prevailing wage.”
- The prevailing wage obligation may be satisfied by:
  - Paying the BHR and FB in cash (including negotiable instruments payable on demand);
  - Contributing payments to a bona fide plan; or
  - Any combination of the two.

# Wages & Fringe Benefits

- Must be paid weekly for all hours worked:
  - Unless the fringe benefits are paid into a bona fide FB plan and then contributions must be paid no less often than quarterly.
- Cash wages paid in excess of BHR may count to offset or satisfy the FB obligation (unlike under SCA).

# Prevailing Wage Example

- **BHR** **\$14.00**
- **FB** **\$ 1.00**
- **Total prevailing wage** **\$15.00**
- **The contractor may comply by paying:**
  - **\$15.00 in cash wages**
  - **\$14.00 in cash wages plus \$1.00 for FB**
  - **\$12.00 in cash wages plus \$3.00 for FB**

# Prevailing Wage Example

- An employee spent 32 hours working as an electrician, with a BHR of \$22.00 and an FBR of \$3.00, and 8 hours working as a laborer, with a BHR of \$14.00 and a FBR of \$1.00.
- The employee is due \$800.00 for his electrician work (32 hours X (\$22.00 + \$3.00)) and \$120.00 for his laborer work (8 hours X (\$14.00 + \$1.00)), for a total of \$920.00.
- The \$920.00 can be paid in any combination of cash wages and fringe benefit contributions.

# Examples of Fringe Benefits

- Life Insurance;
- Health Insurance;
- Pension;
- Vacation;
- Holiday; and
- **Sick Leave (only what exceeds Executive order 13706).**

# Computing the Hourly Equivalent Fringe Benefit Credit – Medical Insurance

- Employer provides medical insurance at \$200 per month to an electrician on a Davis-Bacon project. The WD requires \$16.00 plus \$2.50 in FB's, or \$18.50 an hour. Employee works 160 hours a month
  - $\$200/160 \text{ hours} = \$1.25$  credit per hour for the FB
  - No other benefit provided
  - Electrician is due: \$17.25 in cash wages per hour  
( $\$18.50 - \$1.25 = \$17.25$ )
- \* $\$200 \times 12 \text{ Months} = \$2400/1920 (160 \times 12) = \$1.25$



# **Compliance Principles**

## ***Certified Payrolls***

# Certified Payrolls

- Two separate contract clause requirements apply to “certified payrolls” for a project:
  - The contractor shall submit weekly for any week in which any contract work is performed a copy of all payrolls. 29 C.F.R. § 5.5(a)(3)(ii)(A).
  - Each weekly payroll submitted must be accompanied by a “Statement of Compliance.” 29 C.F.R. § 5.5(a)(3)(ii)(B).

# Certified Payrolls

- Weekly, the contractor must submit “a copy of all payrolls” to:
  - The federal agency; or
  - If the federal agency is not a party to the contract, to the applicant, sponsor, or owner for transmission to the federal agency).

29 C.F.R. § 5.5(a)(3)(ii)(A).

# Certified Payrolls

- Weekly payrolls must include specific information as required by 29 C.F.R. § 5.5(a)(3).
- Weekly payroll information may be submitted in any form desired.
  - Optional Form WH-347 is available for this purpose
  - The WH-347 form, with instructions, is at:  
<http://www.dol.gov/whd/forms/wh347instr.htm>

PAYROLL

(For Contractor's Optional Use; See Instructions at [www.dol.gov/whd/forms/wh347instr.htm](http://www.dol.gov/whd/forms/wh347instr.htm))

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

NAME OF CONTRACTOR <input type="checkbox"/> OR SUBCONTRACTOR <input type="checkbox"/>	ADDRESS	OMB No.: 1235-0008 Expires: 02/28/2018
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PAYROLL NO.	FOR WEEK ENDING	PROJECT AND LOCATION	PROJECT OR CONTRACT NO.
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(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT OR ST.	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS					(9) NET WAGES PAID FOR WEEK	
														FICA	WITH- HOLDING TAX			OTHER		TOTAL DEDUCTIONS
				HOURS WORKED EACH DAY																
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(i) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20036.

# “Statement of Compliance”

- The certification “Statement of Compliance” attached to each weekly payroll must be:
  - On page 2 of the WH-347 Form “Payroll (For Contractors Optional Use)”; or
  - On any form with identical wording.

# “Statement of Compliance” Certification for weekly payrolls

- The properly signed “Statement of Compliance” submitted or transmitted to the appropriate federal agency certifies that:
  - The payroll for the payroll period contains the information required to be provided;
  - The appropriate information is being maintained;
  - Such information is correct and complete;
  - Each laborer or mechanic has been paid the full weekly wages earned; and
  - Each laborer or mechanic has been paid not less than the applicable wages, as specified in the applicable wage determination incorporated into the contract.

# “Statement of Compliance”

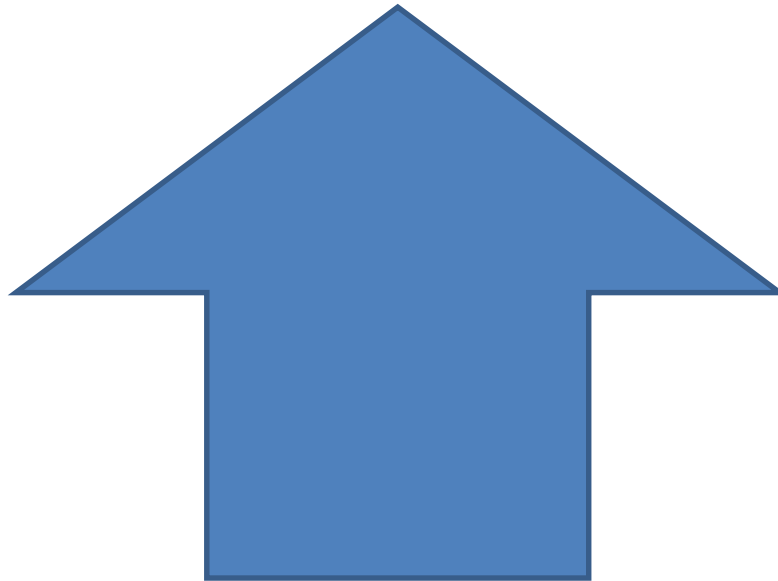
- Must be executed by the contractor or subcontractor or by an authorized officer or employee of the contractor or subcontractor who supervises the payment of wages. 29 C.F.R. § 3.3(b).
- Each weekly statement must be delivered or mailed by the contractor or subcontractor, within seven days after the regular payment date of the payroll period, to a representative of a Federal or State agency contracting for or financing the building or work. 29 C.F.R. § 3.4(a).

NAME AND TITLE

John Q. Public

SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.





# **Compliance Principles**

## ***Overtime***

# Overtime

- Neither DBA nor SCA provide premium rates for overtime hours of work, but both recognize other Federal laws that do:
  - Contract Work Hours and Safety Standards Act (CWHSSA) (40 U.S.C. §§ 327-332) applies to contracts in excess of \$100,000 (\$150,000 for contracts procured under the Federal Acquisition Regulations) that employ laborers, mechanics, guards, and watchmen.
  - Fair Labor Standards Act (FLSA) (29 U.S.C. § 201, et seq.) applies more broadly, with over 130 million workers subject to coverage.

# Requirements of CWHSSA

- Requires overtime pay for laborers, mechanics, guards, and watchmen at a rate of one and a half times the basic rate of pay for hours worked in excess of 40 in a workweek on covered contracts.
- Liquidated damages can be assessed per day for each laborer, mechanic, guard, or watchman not paid proper overtime

# Coverage of CWHSSA

- Covers contracts over \$100,000 (\$150,000 for contracts procured under the Federal Acquisition Regulations) that require or involve the employment of laborers, mechanics, watchmen or guards on
  - DBA covered construction contracts
  - DBRA covered construction contracts; and
  - SCA covered service contracts
- Is self-executing (even if not stated in contract)
- Has no “site of the work” limitation

# Application of CWHSSA

- CWHSSA applies to **laborers, mechanics, guards and watchmen** for the time spent on covered contract work only.
  - Total up all the time each employee spent working **on covered contracts** – off-site as well as on-site on DBA/DBRA projects;
  - Exclude all commercial, non-government, non-covered work.

# Overtime Pay is for Hours Worked

- CWHSSA and FLSA requirements apply only to hours worked.
  - Non-work hours such as paid holidays and paid leave are not counted in computing overtime pay. Rules concerning “Hours Worked” are at 29 C.F.R. Part 785.

# Overtime Pay Computations

## Example 1

- If the employer paid \$22.00 in cash wages and paid \$5.00 in fringe benefits, the electrician would receive:

44 hours x \$22.00 = \$ 968.00 for cash wages

44 hours x \$ 5.00 = \$ 220.00 in fringe benefits

4 hours x  $\frac{1}{2}$  x \$22.00 = \$ 44.00 for CWHSSA earnings

\$1232.00

# Overtime Pay Computations

## Example 2

- If the employer paid \$20.00 in cash wages and \$7.00 in fringe benefits:

44 hours x \$20.00 = \$ 880.00 for cash wages

44 hours x \$ 7.00 = \$ 308.00 in fringe benefits

4 hours x  $\frac{1}{2}$  x \$22.00 = \$ 44.00 in CWHSSA earnings

\$1232.00

# Overtime Pay Computations

## Example 3

- If the employer paid \$24.00 in cash wages and \$3.00 in fringe benefits:

44 hours x \$22.00 = \$ 968.00 for cash wages

44 hours x \$ 2.00 = \$ 88.00 cash in lieu of fringes

44 hours x \$ 3.00 = \$ 132.00 in fringe benefits

4 hours x  $\frac{1}{2}$  x \$22.00 = \$ 44.00 in CWHSSA earnings

\$ 1232.00

# Overtime Computations

## Employee Employed at Different Rates

During a workweek, an employee works 20 hours as an Electrician at \$22.00 an hour and 24 hours as a Painter at \$20.00 an hour.

Electrician  $\$22.00 \times 20 \text{ hours} = \$440.00$

Painter       $\$20.00 \times 24 \text{ hours} = 480.00$

Total      Straight time wages      \$920.00

$\$920 / 44 \text{ hours} = \$20.91 \text{ (regular rate)}$

Overtime due:  $\$20.91 \times 1/2 \times 4 \text{ hours} = \$41.82$

# Liquidated Damages

- CWHSSA
  - Liquidated damages shall be computed in the sum of \$25 per calendar day on which an individual did not receive the required overtime compensation
  - Liquidated damages are assessed by the contracting agency, but the contracting agency must seek the concurrence of the Administrator to reduce or entirely relieve the contractor of liquidated damages liability, per 29 CFR 5.8
- FLSA
  - The statute provides that liquidated damages shall be assessed in an amount equal to the unpaid overtime compensation
  - Liquidated damages are assessed by WHD

# Computing Liquidated Damages under CWHSSA

Are computed at \$27 per day per violation:

	S	M	T	W	T	F	S	Total
<b>Regular Time</b>	0	10	12	13	9	8	3	55

15 weekly hours of overtime were worked on 3 calendar days (Thursday, Friday, Saturday) without payment of overtime. Liquidated damages computed at **\$81**. ( Due to increase in January 2020)



# **Compliance Principles**

## ***Copeland Act***

# Copeland Act

## Purpose and Requirements

- Prohibits “kickback” of wages and back wages
- Requires contractors on DBA/DBRA covered projects to submit weekly a “statement of compliance” (Certified Payroll)
- Regulates payroll deductions

# 18 USC 874 - Kickbacks

- Requiring kickbacks is a felony, and under current federal crime provisions can entail a fine of up to \$250,000 for a person and \$500,000 for a corporation, as well as up to five years in jail.
- Depending upon the circumstances, requiring kickbacks can also potentially involve the commission of other felonies, such as false statements, mail or wire fraud, or obstruction of justice.

# 40 USC 3145 – Certified Payrolls

- The properly signed “Statement of Compliance” submitted or transmitted to the appropriate federal agency certifies that:
  - The payroll for the payroll period contains the information required to be provided;
  - The appropriate information is being maintained;
  - Such information is correct and complete;
  - Each laborer or mechanic has been paid the full weekly wages earned; and
  - Each laborer or mechanic has been paid not less than the applicable wages, as specified in the applicable wage determination incorporated into the contract.

# 40 USC 3145 – Certified Payrolls

- Falsification of a certified payroll is a criminal violation that can result in a fine, up to 5 years in prison, or both. 18 U.S.C. § 874 & 1001.
- It can also be grounds for a lawsuit under the False Claims Act. 31 U.S.C. § 3730.

# Deductions

- Regulations enacted under the authority of 40 USC 3145(a) also regulate the circumstances in which contractors may take deductions from payroll.
- 29 CFR 3.5 describes when deductions may be made without prior approval from the Secretary, while 29 CFR 3.6 describes the circumstances in which the Secretary may grant approval for other types of deductions



# **Compliance Principles**

## ***Investigative Procedures***

# Investigative Responsibilities

- Contracting agencies have day to day enforcement responsibility for:
  - Contract Stipulations;
  - Wage Determinations;
  - WH-1321 Poster;
  - Reviewing certified payrolls;
  - Employee interviews and investigations;
  - Forwarding refusal-to-pay and/or debarment consideration cases to WHD for appropriate action; and
  - Enforcement reports.

# Investigative Responsibilities

- DOL Functions/Responsibilities:
  - Determining “prevailing wages”;
  - Issuing regulations and standards to be observed by contracting agencies; and
  - Perform oversight function and has independent authority to conduct investigations.

# Why Are Employers Investigated?

- WHD conducts investigations for a variety of reasons, and generally does not disclose the reason during the investigation.
- Many investigations are the result of complaints, but all complaints are confidential, and investigators may not even disclose whether one has been received.
- WHD also conducts investigations of business or industries for a variety of other reasons, such as high violation rates, employment of vulnerable workers, or rapid changes in the industry.

# The Investigation Process

- Investigators will obtain the following information:
  - Copy of labor standards clauses in contract;
  - Copy of Davis-Bacon WD in contract, including any instructions for multiple schedules;
  - Copies of certified payrolls; and
  - Employer identification number.

# The Investigation Process

- Initial conference with employer.
- Examine certified payrolls.
- Examine basic payroll records.
- Check for compliance with apprenticeship and/or trainee requirements.
- Interview employees
- Determine if a conformance is necessary.
- Evaluate compliance with prevailing wages and FBs
- Apply CWHSSA if applicable
- Compute back wages and liquidated damages, if any
- Final conference with employer to discuss results of the investigation

# Conclusion of Investigation

- Final Conference Procedure:
  - Inform contractor of investigation findings;
  - Detail steps to eliminate violations;
  - Consider additional evidence that may impact on findings (*e.g.*, conformance); and
  - Request payment of back wages and any liquidated damages under CWHSSA.



# **Compliance Principles**

## ***Withholding & Debarment***

# Withholding

- DBA and CWHSSA provide for withholding of contract funds to satisfy alleged wage underpayments pending resolution of a wage dispute.
  - 40 U.S.C. § 3142(c)(3); 40 U.S.C. § 3702(d).
- Withholding of contract funds is an effective enforcement tool in DBA/DBRA/CWHSSA cases.
  - It protects the rights of covered workers to wages due them.

# Withholding

- Withholding from another federal contract with the same prime contractor is called “cross-withholding.”
- The contracting agency may withhold funds:
  - on its own initiative; or
  - at the direction of DOL.

# Debarment

- Occurs when a contractor is declared *ineligible* for future contracts due to:
  - Violations of the DBA in disregard of its obligations to employees or subcontractors.
  - Aggravated or willful violations under the labor standards provisions of related Acts.
- Period of ineligibility is 3 years for DBA and up to 3 years for DBRA.

# Debarment Criteria

- Debarment is considered when a contractor has:
  - Submitted falsified certified payrolls;
  - Required “kickbacks” of wages or back wages;
  - Committed repeat violations;
  - Committed serious violations;
  - Misclassified covered workers in clear disregard of proper classification norms; and/or
  - As a prime contractor, failed to ensure compliance by subcontractors.

# Debarment List

- The name(s) of the contractor and any responsible parties, along with the name of any firms in which they are known to have an interest, are placed on the list of ineligible persons or firms, which is distributed to federal agencies.
- This list is searchable online at the [System Awards Management website](#)

# Federal Minimum Wage

## WORKER RIGHTS UNDER EXECUTIVE ORDER 13658

### FEDERAL MINIMUM WAGE FOR CONTRACTORS

**Effective January 1, 2020  
the new rate will be  
\$10.80**

#### EXCLUSIONS

- Some workers who provide support in connection with covered contracts for less than 20 percent of their hours worked in a week may not be entitled to the EO minimum wage.
- Certain full-time students, learners, and apprentices who are employed under subminimum wage certificates are not entitled to the EO minimum wage.
- Workers employed on contracts for seasonal recreational services or seasonal recreational equipment rental for the general public on federal lands, except when the workers are performing associated lodging and food services, are not entitled to the EO minimum wage.
- Certain other occupations and workers are also exempt from the EO.

#### ENFORCEMENT

The U.S. Department of Labor's Wage and Hour Division (WHD) is responsible for enforcing the EO. WHD can answer questions, in person or by telephone, about your workplace rights and protections. We can investigate employers, recover wages to which workers may be entitled, and pursue appropriate sanctions against covered contractors. All services are free and confidential. The law also prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the EO. If you are unable to file a complaint in English, WHD will accept the complaint in any language. You can find your nearest WHD office at <https://www.dol.gov/whd/local/>.

#### ADDITIONAL INFORMATION

- The EO applies only to new federal construction and service contracts, as defined by the Secretary in the regulations.
- Workers with disabilities whose wages are governed by special certificates issued under section 14(c) of the Fair Labor Standards Act must also receive no less than the full EO minimum wage rate.
- Some state or local laws may provide greater worker protections; employers must comply with both.
- More information about the EO is available at: [www.dol.gov/whd/fisa/eo13658](http://www.dol.gov/whd/fisa/eo13658).



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

1-866-487-9243  
TTY: 1-877-889-5627  
[www.dol.gov/whd](http://www.dol.gov/whd)



WH1368 REV 02/19

# Paid Sick Leave

## WORKER RIGHTS UNDER EXECUTIVE ORDER 13706

### PAID SICK LEAVE <sup>FOR</sup> FEDERAL CONTRACTORS

ONE HOUR OF PAID SICK LEAVE FOR EVERY 30  
HOURS WORKED, UP TO 56 HOURS EACH YEAR

**PAID SICK LEAVE** Executive Order 13706, Establishing Paid Sick Leave for Federal Contractors, requires certain employers that contract with the Federal Government to provide employees working on or in connection with those contracts with 1 hour of paid sick leave for every 30 hours they work – up to 56 hours of paid sick leave each year.

Employees must be permitted to use paid sick leave for their own illness, injury, or other health-related needs, including preventive care; to assist a family member who is ill, injured, or has other health-related needs, including preventive care; or for reasons resulting from, or to assist a family member who is the victim of, domestic violence, sexual assault, or stalking.

Employers are required to inform employees of their paid sick leave balances and must approve all valid requests to use paid sick leave. Rules about when and how employees should ask to use paid sick leave also apply. More information about the paid sick leave requirements is available at [www.dol.gov/whd/govcontracts/eo13706](http://www.dol.gov/whd/govcontracts/eo13706).

**ENFORCEMENT** The Wage and Hour Division (WHD), which is responsible for making sure employers comply with Executive Order 13706, has offices across the country. WHD can answer questions, in person or by telephone, about your workplace rights and protections. WHD can investigate employers and recover wages to which workers may be entitled. All services are free and confidential. If you are unable to file a complaint in English, WHD will accept the complaint in any language.

The law prohibits discriminating against or discharging workers who file a complaint or participate in any proceeding under the Executive Order.

**ADDITIONAL INFORMATION** Executive Order 13706 applies to new contracts and replacements for expiring contracts with the Federal Government starting January 1, 2017. It applies to federal contracts for construction and many types of federal contracts for services.

Some state and local laws also require that employees be provided with paid sick leave. Employees must comply with all applicable requirements.



WAGE AND HOUR DIVISION  
UNITED STATES DEPARTMENT OF LABOR

1-866-487-6343  
TTY: 1-877-684-6827  
[www.dol.gov/whd/govcontracts](http://www.dol.gov/whd/govcontracts)



WHD-16-0001

# Overview of Executive Order 13706: Paid Sick Leave for Federal Contract Workers

- EO 13706 was signed on September 7, 2015.
  - It requires covered contractors to allow employees to accrue 1 hour of paid sick leave for every 30 hours worked on or in connection with a covered contract, up to 56 hours (7 days) per year, and to use accrued leave for certain purposes.
- Regulations for the EO were published on September 30, 2016 ([29 CFR Part 13](#)).
  - The regulations provide details about coverage, exclusions, the accrual and use of paid sick leave, requirements for contractors and contracting agencies, and enforcement.

# Overview of Executive Order 13706: Paid Sick Leave for Federal Contract Workers

- Requirements are effective as of January 1, 2017.
  - The requirements of the EO and regulations are effective as of January 1, 2017, though they only apply to “new contracts” on or after that date.



## Coverage:

### Which contracts are covered by EO 13706?

EO 13706 applies to **four types of contracts** entered into by the federal government (29 CFR 13.3(a)(1):

- Procurement contracts for construction covered by the Davis-Bacon Act (DBA).
  - This includes prime contracts at the \$2,000 threshold and DBA-covered lower-tier contracts of any monetary value.
- Service contracts covered by the Service Contract Act (SCA).
  - This includes prime contracts at the \$2,500 threshold and SCA-covered lower-tier contracts of any monetary value.



# **Compliance Assistance**

# Online Resources

- Wage Determinations – <https://beta.sam.gov/>
- Wage and Hour Division - <http://www.dol.gov/whd>
- Resource Book - <https://www.dol.gov/whd/govcontracts/pwrb/toc.htm>
- Office of the Administrative Law Judges Law Library - <http://www.oalj.dol.gov>
- Administrative Review Board - <http://www.dol.gov/arb>

# Local Resources

- Oklahoma City District Office
  - 405-231-4158
- Tulsa Area Office
  - 918-581-6303
- Lawton Field Office
  - 580-357-3796